

April 11, 2022

Via online submission

FOIA Officer
United States Environmental Protection Agency, FOIA Office
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Dear FOIA Officer,

American Bird Conservancy (“ABC”) hereby requests disclosure, under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and implementing regulations, 43 C.F.R. § 2.1 et seq., of the records described below in the possession, custody, or control of the United States Environmental Protection Agency (“EPA”).

Background

On February 09, 2022, ABC Director of Government Relations, Pesticides and Birds Campaign E. Hardy Kern III sent an email to the EPA’s inquiry portal on the Pesticide Science and Assessing Pesticide Risk website requesting information on the existence of a repository of reported pesticide ecological incidents and where it could be viewed.

The EPA Office of Pesticide Programs (“OPP”) responded on February 16, 2022, stating that the database on adverse incidence from pesticide registrants, and from the public, is kept by the office as required by the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) § 6(a)(2).

FIFRA § 6(a)(2) states, “If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator.” This has been extended in practice to include incidents reported by members of the public as well as registrants.

The EPA website includes instructions on how to report ecological incidents, defining them as “any exposure or effect from a pesticide’s use that is not expected or intended. Pesticide incidents may involve humans, wildlife, plants, domestic animals (e.g., pets) and bees. Pesticide spills can also be a type of incident.”

The National Pesticide Information Center (“NPIC”) website also includes a guide for submitting an ecological incident, stating “ecological incidents are when adverse field effects involve non-target entities such as: wildlife, birds, fish, shell fish, bees, and plants (including non-crop damage from dicamba or other herbicide use).”

Accordingly, it appears likely from these websites that documents falling within this request do exist.

Documents Requested

ABC requests production of Ecological Pesticide Incident Reports related to all neonicotinoid insecticides (including imidacloprid, clothianidin, thiamethoxam, thiacloprid, dinotefuran, and acetamiprid) registered by the EPA beginning January 1, 1990 up to the present.

ABC requests production of Ecological Pesticide Incident Reports related to the organophosphate chlorpyrifos since its initial registration in 1965 up to the present.

ABC requests production of Ecological Pesticide Incident Reports related to the organophosphate diazinon since its initial registration in 1956 up to the present.

ABC requests production of Ecological Pesticide Incident Reports related to paraquat dichloride since its initial registration in 1964 up to the present.

Request for a Fee Waiver

FOIA provides for a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 43 C.F.R. § 2.45(a)(1)-(2). The disclosure ABC seeks meets both of these requirements.

The requested documents clearly involve operations of the government. FIFRA requires EPA to keep a record of all pesticide ecological incidents reported by pesticide registrants, and the OPP response mentioned above said that that incidents reported by the public are also recorded.

Studies have shown that neonicotinoid insecticides, chlorpyrifos, diazinon¹, and paraquat dichloride² adversely affect human health, environmental health, and long-term bird population sustainability.³ The recorded ecological incidents from pesticides may provide additional information which can lead to meaningful decisions to protect human and environmental health. The EPA is currently reviewing the registration of these pesticides or will do so in coming years. The Ecological Pesticide Incident Reports may indicate further issues with the pesticides not yet clearly presented to the public.

ABC has the expertise to objectively interpret the reports and may disseminate the requested information in service of creating a less toxic environment for people and wildlife. ABC is one of the leading bird conservation organizations in the United States, and it routinely makes information regarding threats to birds available through both print and on-line publications, as well as by providing such information to the media in the form of press releases, press advisories, etc. The request will clearly meet the first prerequisite for a fee waiver because “the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F.R. § 2.48(a)(4).

¹ <https://www.epa.gov/endangered-species/biological-opinions-available-public-comment-and-links-final-opinions>

² <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0855-0121>

³ https://abcbirds.org/wp-content/uploads/2015/05/Neonic_FINAL.pdf

Finally, ABC has no commercial interests that would be furthered by the requested disclosure. ABC is a not-for-profit organization, does not sell information obtained under FOIA, and will realize no commercial benefit from the disclosure of the requested records. Hence ABC is entitled to a fee waiver.⁴

Please provide the document requested above regardless of your fee waiver decision, for ABC will pay fees under protest under 43 C.F.R. § 2.37 *et seq.*

⁴ In the alternative, ABC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA because ABC routinely disseminates information regarding important bird conservation issues through its web-site, in newsletters, and through similar formats. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).